

Eli's Rehab Report

Compliance: Want to Opt Out of Medicare? Not So Fast!

PTs, OTs, and SLPs have a different set of rules than physicians.

Imagine this: An older patient walks through your door, you form a treatment plan, and she asks to pay you cash for her course of treatments -- even though her therapy is covered by Medicare. You agree to set up a

Watch out: Doing this could get you into trouble because physical therapists and occupational therapists, enrolled as Medicare providers (and speech-language pathologists come July), don't have the choice to privately contract with Medicare beneficiaries, also known as opting out of Medicare.

Many therapists aren't aware of this stipulation because so many Medicare providers can opt out. Physicians, including dentists and optometrists, and even non-physician practitioners, such as clinical social workers and nurse practitioners, can opt out of Medicare, points out **Gayle Lee, Esq.**, director of regulatory affairs for the American Physical Therapy Association. They have to send opt-out affidavits to their Medicare contractors that say they will not collect any money from Medicare for the next two years. But therapists can't do this, Lee says.

The catch: Physical therapists in independent practice and occupational therapists in independent practice cannot opt out because they are not within the opt out laws definition of either a physician or practitioner, CMS says in the Medicare Benefits Policy Manual, section 40.4. SLPs can't opt out either; they simply aren't mentioned here because at the time CMS wrote this policy, SLPs were not considered independent Medicare providers.

When Collecting Cash Is A-OK

When the services you're providing aren't covered by Medicare, you have every right to collect payment in cash from your Medicare patients -- and you don't need to opt out to do it.

For example: A patient who has exceeded her \$1840 therapy cap limit and does not qualify for an exception would be fair game for paying you cash, Lee says. Prevention and wellness programs are also examples of non-covered situations.

In the OT realm, suppose a client without a specified medical condition or physician referral wants to do a driving rehab program. Medicare does not cover that, points out **Judy Thomas**, senior policy manager for the American Occupational Therapy Association.

Examples of non-covered situations for SLPs may be a person wanting to eliminate an accent, a public speaker wanting to polish his voice quality, or a professional singer wanting to improve clarity, points out **Mark Kander**, director of health care regulatory analysis for the American Speech-Language Hearing Association.

Don't miss: You may encounter situations where a therapy service is generally covered by Medicare, but the patient has reached a point where the therapy would fall under maintenance therapy, thus would probably not be covered. In this case, you could collect directly from the patient, but you're required to provide the patient with an Advance Beneficiary Notice form so she realizes the service may not be covered and that she's responsible for the payment, Lee says.

An ABN is not required for situations where your services are statutorily non-covered, but it's a good idea to use one so your patient doesn't assume her therapy is covered.

Don't Confuse Non-Participating With Opting Out

A therapist who directly bills Medicare can choose to be non-participating, but this is different from opting out of Medicare. It's just declaring that you won't accept Medicare assignment. In other words, the patient pays you in full but

submits a claim and gets reimbursed directly by Medicare using a 1490 claim form. This is not considered opting out because Medicare is still reimbursing, Kander explains.

Important: If you do not accept Medicare assignment and a patient asks you to complete and submit the 1500 claim form on their behalf, you are required to do so, Kander says.

Know this: The payment from Medicare for nonparticipating [providers] is 95 percent of the fee schedule amount, and the patient makes up the difference up to 115 percent, Lee says.

So, regardless of whether a therapist chooses to participate, he or she must enroll in order to treat Medicare beneficiaries, Thomas clarifies.